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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

Civil No. 08-0230-AA
OPINION AND ORDER

KIMBER TAYLOR,

Plaintiff,

vs.

MICHAEL J. ASTRUE,
Commissioner of Social Security,

Defendant.

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1 AIKEN, Judge:

2 Claimant, Kimber Taylor, brings this action pursuant to
3 the Social Security Act (the Act), 42 U.S.C. §§ 405(g) and
4 1383(c)(3), to obtain judicial review of a final decision of
5 the Commissioner denying her application for disability
6 insurance benefits under Title II of the Act and for
7 Supplemental Security Income (SSI) disability benefits under
8 Title XVI of the Act. For the reasons set forth below, the
9 Commissioner's decision is affirmed and this case is dismissed.

10 PROCEDURAL BACKGROUND

11 Claimant protectively filed for SSI on July 23, 2003.
12 Tr. 72, 177. This is also her alleged onset date.¹ Tr. 177,
13 396. On September 18, 2006, an Administrative Law Judge (ALJ)
14 conducted a hearing at which time he heard testimony from three
15 witnesses: claimant, who was represented by an attorney; Scott
16 T. Stipe, a vocational expert (VE); and Bruce Irvin Jenson,
17 claimant's "care provider." Tr. 25. On October 13, 2006, the
18 ALJ issued a decision finding that the claimant was not
19 disabled within the meaning of the Act. Tr. 22-38. The
20 Appeals Council denied claimant's request for review, tr. 8-10,
21 making the ALJ's decision the final agency decision. See 20
22 C.F.R. §§ 404.981, 416.1481.

23 STATEMENT OF FACTS

24 The specific facts of the case will not be repeated here.
25 Instead, the court refers to and relies on the ALJ's decision
26 and summary of facts, statements, testimony, medical records,
27

28 ¹As filed, the alleged onset date was January 1, 1983, however plaintiff
amended this date to the filing date during the ALJ hearing.

1 and other evidence. Each fact relied on by the ALJ included a
2 specific citation to the record, either an exhibit or
3 testimony.

4 Generally, claimant alleged disability on July 23, 2003.
5 At that time, she was 40 years old and considered to be a
6 "younger individual." Tr. 69, 38. See 20 C.F.R. § 404.1563.
7 She has at least a high school education (general equivalency
8 diploma). Tr. 398. Additionally, she has some college level
9 computer and keyboard training. Tr. 411-12. She has not
10 performed substantial gainful activity (SGA) since her alleged
11 onset date. Tr. 27.

12 Claimant has a history of drug and alcohol use including
13 marijuana, cocaine, and methamphetamine. Tr. 145. She
14 admitted to a methamphetamine relapse in 2004, however, she
15 cannot otherwise recall any use since 1996. Tr. 399, 413; see
16 also, tr. 425.

17 Her criminal history includes 18 months in prison around
18 1991 for criminal mistreatment, associated with the death of
19 her son. Other remote charges include thefts, trespass, and
20 escape. Tr. 146. In December 2002, claimant was convicted of
21 possession of a controlled substance. She received 24 months
22 probation, which she completed on December 13, 2004. Tr.
23 258-60.

24 Prior to claimant's onset date she began treatment with
25 psychiatrist Dr. George Suckow at the recommendation of her
26 church. On March 18, 2003, he made the following "tentative
27 diagnosis:" panic disorder with agoraphobia, rule out bipolar
28 disorder, her son and crowds as stressors, and a global

1 assessment of functioning (GAF) of 35. Tr. 277. On April 17,
2 2003, Dr. Suckow diagnosed claimant as having panic disorder
3 with agoraphobia, attention deficit disorder, dyslexia, and a
4 GAF of 35. Tr. 275. At that time, he started claimant on
5 Paxil and Straterra. Id.

6 On June 9, 2003, Dr. Suckow reported that claimant seemed
7 a little better. Tr. 273. On August 11, 2003, he reported
8 claimant was doing fairly well. Tr. 272. Additionally, on
9 September 15, 2003, Dr. Suckow again reported claimant was
10 doing fairly well. Tr. 271. However, on September 15, 2003,
11 Dr. Suckow's treatment ended due to claimant's failure to
12 attend scheduled appointments. Id. Subsequently, her Oregon
13 Health Plan insurance was canceled due to her failure to attend
14 medical appointments. Tr. 284.

15 On October 28, 2003, claimant saw clinical psychologist
16 Dr. Maribeth Kallemeyn. Tr. 278-285. At this time, claimant
17 was no longer taking the medication prescribed by Dr. Suckow.
18 Tr. 280. On November 4, 2003, Dr. Kallemeyn made the following
19 "diagnostic impressions:" bipolar II disorder, panic disorder
20 with agoraphobia, rule out reading disorder, methamphetamine
21 dependence in full sustained remission per client report, rule
22 out dependent personality disorder, history of concussions as a
23 child per client report, limited finances and recent loss of
24 health insurance as stressors, and a GAF of 50. Tr. 284.

25 On February 4, 2004, claimant's parole officer went to
26 her residence, at which time she admitted using methamphetamine
27 three days prior. Tr. 251.

28 On February 12, 2004, Disability Determination Services

1 (DDS) psychologist Dr. Peter LeBray found that without drug or
2 alcohol abuse claimant's impairments were non-severe. Tr. 286-
3 296. Under "Substance Addiction Disorders," Dr. LeBray wrote
4 "Meth" as a disorder. Tr. 294.

5 On April 29, 2004, Dr. Suckow again evaluated claimant
6 and made the following "diagnosis:" panic disorder with
7 agoraphobia, attention deficit disorder, dyslexia, and a GAF of
8 35. Tr. 308-09.

9 On September 16, 2004, DDS psychologist Dr. Dorothy
10 Anderson, reviewed claimant's files and affirmed Dr. LeBray's
11 assessment that without drug or alcohol abuse claimant's
12 impairments were non-severe. Tr. 286.

13 On November 30, 2004, claimant reported to Dr. Suckow
14 that the medications were working, she was feeling and thinking
15 better, and could "stick with something now and follow it
16 through." Tr. 326. For example, by herself, she made an
17 entire Thanksgiving dinner for her family without any mistakes.
18 Id. On March 8, 2005, claimant reported to Dr. Suckow that she
19 received another drug related criminal charge. Tr. 330.

20 On June 26, 2006, claimant reported to Dr. Suckow that
21 with the Strattera she could concentrate better and follow
22 recipes. Tr. 343. Additionally, she thought it was really
23 helping her. Id.

24 On July 20, 2006, Dr. Suckow completed a "check-the-box"
25 medical source statement. Tr. 302-04. The form instructions
26 are in part:

27 Please rate the individual's capacities to perform the
28 following basic mental activities of work on a sustained
basis. ... If the patient abuses drugs or alcohol, please

1 indicate those impairment levels which you would expect
2 to persist if drug and alcohol abuse were to cease.

3 Tr. 302. Dr. Suckow indicated claimant's conditions would
4 cause her to miss work most days. Tr. 304. He checked yes to
5 a question asking if claimant's conditions had existed and
6 persisted with restrictions at least this severe since July 23,
7 2003. Id. He checked no to a question asking if claimant
8 could manage benefits in her own best interests. Id. Dr.
9 Suckow failed to indicate if drug or alcohol abuse had an
10 effect on claimant's impairment levels.

11 On December 14, 2006, claimant sought assistance from
12 Vocational Rehabilitation Division (VRD). Tr. 361. On March
13 27, 2007, a VRD counselor wrote to Dr. Suckow for claimant's
14 current limitations. Tr. 368. This time Dr. Suckow was
15 instructed to exclude limitations due to any ongoing drug or
16 alcohol addiction:

17 "In responding to the ratings on this form, please do not
18 include any limitations that you believe the individual
19 has as a result of his or her alcoholism or drug
20 addiction, if any. In other words, do not include
21 limitations that would go away if the individual stopped
22 using drugs or alcohol."

23 Tr. 370 (emphasis in original). On April 4, 2007, Dr. Suckow
24 again completed a "check-the-box" form indicating claimant's
25 limitations relating to cognitive processes, social
26 interaction, and adaption. Tr. 370-71. He indicated that
27 claimant's limitations varied from moderately to markedly
28 limited. Tr. 371. In addition, he indicated that claimant's
date of disability onset was 1988, and that he expected her
disability to persist for life. Id. In response to whether

1 claimant is compliant with treatment he marked yes, but also
2 noted "frequent no shows." Id.

3 STANDARD OF REVIEW

4 This court must affirm the Secretary's decision if it is
5 based on proper legal standards and the findings are supported
6 by substantial evidence in the record. Hammock v. Bowen, 879
7 F.2d 498, 501 (9th Cir. 1989). Substantial evidence is "more
8 than a mere scintilla. It means such relevant evidence as a
9 reasonable mind might accept as adequate to support a
10 conclusion." Richardson v. Perales, 402 U.S. 389, 401
11 (1971) (quoting Consolidated Edison Co. v. N.L.R.B., 305 U.S.
12 197, 229 (1938)). The court must weigh "both the evidence that
13 supports and detracts from the Secretary's conclusions."
14 Martinez v. Heckler, 807 F.2d 771, 772 (9th Cir. 1986).

15 The initial burden of proof rests upon the claimant to
16 establish disability. Howard v. Heckler, 782 F.2d 1484, 1486
17 (9th Cir. 1986). To meet this burden, claimant must
18 demonstrate an "inability to engage in any substantial gainful
19 activity by reason of any medically determinable physical or
20 mental impairment which can be expected . . . to last for a
21 continuous period of not less than 12 months. . . ." 42 U.S.C.
22 § 423(d)(1)(A).

23 The Secretary has established a five-step sequential
24 process for determining whether a person is disabled. Bowen v.
25 Yuckert, 482 U.S. 137, 140 (1987); 20 C.F.R. §§ 404.1502,
26 416.920. First the Secretary determines whether a claimant is
27 engaged in "substantial gainful activity." If so, the claimant
28 is not disabled. Yuckert, 482 U.S. at 140; 20 C.F.R.

1 §§ 404.1520(b), 416.920(b).

2 In step two the Secretary determines whether the claimant
3 has a "medically severe impairment or combination of
4 impairments." Yuckert, 482 U.S. at 140-41; see 20 C.F.R.
5 §§ 404.1520^(b), 416.920^(b). If not, the claimant is not
6 disabled.

7 In step three the Secretary determines whether the
8 impairment meets or equals "one of a number of listed
9 impairments that the Secretary acknowledges are so severe as to
10 preclude substantial gainful activity." Id.; see 20 C.F.R.
11 §§ 404.1520(d), 416.920(d). If so, the claimant is
12 conclusively presumed disabled; if not, the Secretary proceeds
13 to step four. Yuckert, 482 U.S. at 141.

14 In step four the Secretary determines whether the
15 claimant can still perform "past relevant work." 20 C.F.R.
16 §§ 404.1520(e), 416.920(e). If the claimant can work, she is
17 not disabled. If she cannot perform past relevant work, the
18 burden shifts to the Secretary. In step five, the Secretary
19 must establish that the claimant can perform other work.
20 Yuckert, 482 U.S. at 141-42; see 20 C.F.R. §§ 404.1520(e) &
21 (f), 416.920(e) & (f). If the Secretary meets this burden and
22 proves that the claimant is able to perform other work which
23 exists in the national economy, she is not disabled. 20 C.F.R.
24 §§ 404.1566, 416.966.

25 DISCUSSION

26 The ALJ's Findings

27 At step one of the five step sequential evaluation
28 process outlined above, the ALJ found that claimant had not

1 engaged in substantial gainful activity during the relevant
2 time period. Tr. 27, Finding 1. This finding is not in
3 dispute. At step two, the ALJ found that claimant's
4 impairments are non-severe. Tr. 27, Finding 2. This finding
5 is in dispute. Although this would normally end the inquiry,
6 the ALJ proceeded to make findings in the alternative for steps
7 three through five.

8 At step three, the ALJ found that claimant did not have
9 an impairment or combination of impairments that met or
10 medically equaled any of the listed impairments. Tr. 28,
11 Finding 3. This finding is in dispute. Additionally, the ALJ
12 found that claimant had a residual functional capacity (RFC):
13 "to perform simple repetitive work with no public interaction
14 and limited co-worker interaction." Tr. 29. This finding is in
15 dispute.

16 At step four, the ALJ found that claimant could probably
17 perform her past relevant work as a mail sorter. Tr. 36,
18 Finding 5. This finding is in dispute. Finally, at step five,
19 the ALJ found that claimant could perform other work existing
20 in significant numbers in the national economy; specifically as
21 a mail sorter, laundry worker, and food sorter. Tr. 37,
22 Finding 9. This finding is in dispute.

23 The ALJ's Step Two Finding

24 After reviewing the record and the ALJ's decision, I find
25 the ALJ's decision is supported by substantial evidence. At
26 step two, the ALJ found claimant's psychological and medical
27 treatment was based solely on her subjective symptom report.
28 None of the mental diagnoses were confirmed by objective

1 medical evidence such as standardized psychological testing.
2 The ALJ further found that claimant lacked credibility, which
3 detracted from the reliability of medical opinions based solely
4 on her subjective symptoms.

5 The ALJ additionally found a consultative examination was
6 unnecessary because claimant had made noted improvement since
7 her onset date. This finding is supported by claimant's own
8 self-report and corroborated by Dr. Suckow. Based on the lack
9 of adequate objective medical evidence and the claimant's
10 improvement, the ALJ found at step two that claimant's
11 impairments are non-severe. I agree. Furthermore, I find
12 claimant's failure to meet her initial burden of proving her
13 disability justifies the denial of benefits.

14 Lack of Objective Evidence

15 In Social Security Ruling (SSR) 96-4p, the Social
16 Security Administration (SSA) explained what is needed under
17 SSA regulations to show a medically determinable impairment.
18 SSR 96-4p, 1996 WL 374187 (July 2, 1996).² The ruling
19 clarified that "the existence of a medically determinable
20 physical or mental impairment must be established by medical
21 evidence consisting of signs, symptoms, and laboratory
22 findings, [however] the regulations further provide that under
23 no circumstances may the existence of an impairment be

24
25 ²"SSRs do not have the force of law" but "represent the Commissioner's
26 interpretation of the agency's regulations." Holohan v. Massanari, 246 F.3d 1195,
27 1202 n.1 (9th Cir. 2001). Therefore we "give them some deference" as long as they
28 are consistent with the Social Security Act and regulations. Id. (citation
omitted). SSR 96-4p is consistent with the purpose of Titles II and XVI of the Act
to provide financial assistance to those who are disabled. See Kildare v. Saenz,
325 F.3d 1078, 1080 (9th Cir. 2003); see also Ukolov v. Barnhart, 420 F.3d 1002,
1004 (9th Cir. 2005).

1 established on the basis of symptoms alone." Id. at *1
2 (footnote omitted) (emphasis added); see also 20 C.F.R. §§
3 404.1508, 416.908. The ruling distinguished between symptoms
4 and signs: "symptoms . . . are an individual's own perception
5 or description of the impact of his or her physical or mental
6 impairment(s). . . . When any of these manifestations is an
7 anatomical, physiological, or psychological abnormality that
8 can be shown by medically acceptable clinical diagnostic
9 techniques, it represents a medical 'sign' rather than a
10 'symptom.'" SSR 96-4p, 1996 WL 374187, at *1 n.2; see also 20
11 C.F.R. §§ 404.1528(a)-(b), 416.928(a)-(b). The ruling then
12 re-emphasized the importance of objective medical evidence to
13 determine disability:

14
15 Regardless of how many symptoms an individual alleges, or
16 how genuine the individual's complaints may appear to be,
17 the existence of a medically determinable physical or
18 mental impairment cannot be established in the absence of
19 objective medical abnormalities; i.e., medical signs and
20 laboratory findings. . . . In claims in which there are
21 no medical signs or laboratory findings to substantiate
22 the existence of a medically determinable physical or
23 mental impairment, the individual must be found not
24 disabled at step 2 of the sequential evaluation process.

25
26 SSR 96-4p, 1996 WL 374187, at *1-2.

27 Accordingly, claimant can only establish an impairment if
28 the record includes signs and symptoms. Ukolov v. Barnhart,
29 420 F.3d 1002, 1005 (9th Cir. 2005).

30 Ruling SSR 96-6p provides that medical opinions offered
31 to support an impairment must include "symptoms [and a]
32 diagnosis." See SSR 96-6p, 1996 WL 374180, at *1 (July 2,
33 1996). Claimant's records contain no reference to results from

1 "medically acceptable clinical diagnostic techniques" that
 2 would support a finding of impairment. See SSR 96-4p, 1996 WL
 3 374187, at *1 n.2. Additionally, claimant's records are based
 4 solely on claimant's own "perception or description" of her
 5 problems. Id.; 20 C.F.R. §§ 404.1528(a)-(b), 416.928(a)-(b).
 6 Because none of the medical opinions include a finding of
 7 impairment, or objective test results, claimant failed to meet
 8 her burden of establishing disability.³ See Celaya v. Halter,
 9 332 F.3d 1177, 1180 (9th Cir. 2003) ("Step two disqualifies
 10 those claimants who do not have one or more severe
 11 impairments."). Under such a circumstance, the ALJ committed
 12 no legal error in finding lack of impairment at step two of the
 13 process. See Ball v. Massanari, 254 F.3d 817, 823 (9th Cir.
 14 2001) ("If the claimant's ailment does not pass step 2, ... it
 15 is not disabling.").

16 In addition to the lack of objective evidence, further
 17 reasons support finding claimant's impairments non-severe at
 18

19 ³On March 28, 2003, Dr. Suckow made a "tentative diagnosis" and again on April
 20 17, 2003, he made a similar "diagnosis." Additionally, on August 11, 2003, the
 21 claimant asked for a statement from Dr. Suckow stating she is being treated for
 22 anxiety with panic and agoraphobia which she needed for Adult and Family services.
 23 However, there are no records of objective test results supporting these
 24 "diagnoses." All diagnoses appear to be based solely on claimant's subjective
 25 symptoms. Notably, on April 29, 2004, Dr. Suckow's records indicate that claimant
 26 had a history of drugs and alcohol, but has been clean and sober since 1996, except
 27 for a few drinks four years ago. However, just two months before this visit
 28 claimant admitted using methamphetamine to her probation officer. Tr. 251 and Tr.
 308.

25 Similarly, on November 4, 2003, Dr. Kallemeyn made "diagnostic impressions."
 26 Again, no objective test results support her diagnosis. The diagnosis again appears
 27 to be based solely on claimant's subjective symptoms. The only objective test given
 28 was a WAIS-III Digit Span sub-test which claimant scored in the 50th percentile
 compared to others her age. Additionally, Dr. Kallemeyn remarked that claimant's
 performance on mental status tasks was better than expected. Claimant performed
 average on a test of attention/concentration, above average on the simple attention
 portion, and below average on the complex attention portion.

1 step two. These include contradictory and inaccurate evidence,
2 claimant's positive response to medication, and claimant's lack
3 of credibility.

4 Contradictory and Inaccurate Evidence

5 Generally, "a treating physician's opinion is ...
6 afforded the greatest weight in disability cases, [however,] it
7 is not binding on an ALJ with respect to the existence of an
8 impairment or the ultimate determination of disability."

9 Batson v. Comm'r of the SSA, 359 F.3d 1190, 1195 (9th Cir.
10 2004) (quoting Tonapetyan v. Halter, 242 F.3d 1144, 1149 (9th
11 Cir. 2001)) (emphasis added). When evidence in the record
12 contradicts the opinion of a treating physician, the ALJ must
13 only present "specific and legitimate reasons" for discounting
14 the treating physician's opinion, supported by substantial
15 evidence. Lester v. Chater, 81 F.3d 821, 830 (9th Cir. 1995).
16 However, "[t]he ALJ need not accept the opinion of any
17 physician, including a treating physician, if that opinion is
18 brief, conclusory, and inadequately supported by clinical
19 findings." Thomas v. Barnhart, 278 F.3d 947, 957 (9th Cir.
20 2002).

21 Here, the reports of DDS psychologists Dr. Peter LeBray
22 and Dr. Dorothy Anderson contradict the opinions of Dr. Suckow
23 and Dr. Kallemeyn. Moreover, as noted above, there is a lack
24 of objective evidence supporting Drs. Suckow and Kallemeyn's
25 opinions. Thus, the ALJ was only required to provide "specific
26 and legitimate" reasons supported by substantial evidence for
27 discounting their opinions. Lester, 81 F.3d at 830.

28 Notably, nearly all of the diagnoses claimant relies on

1 are made by Dr. Suckow. Additionally, two of the diagnoses
2 claimant relies on were made by Dr. Suckow prior to claimant's
3 onset date of July 23, 2003. Moreover, shortly after
4 claimant's onset date, Dr. Suckow twice reported that claimant
5 was doing "fairly well." Presumably, this was because, at the
6 time, claimant was following the prescribed treatment plan,
7 including medication. Also notable, is neither Dr. Suckow nor
8 any other doctor diagnosed claimant while she was taking her
9 medication. Based on this record, the best indicator of the
10 treatment's effectiveness are Dr. Suckow's records and
11 claimant's own self-report that she was doing fairly well.

12 As discussed above, objective testing is required to
13 establish a severe impairment at step two and none can be found
14 in Dr. Suckow's record. In addition to lacking objective
15 testing, Dr. Suckow's records are inaccurate. In his April 29,
16 2004, record he reports claimant as being clean and sober since
17 1996 with the exception of a few drinks four years ago.
18 Similarly, his 2003 records state that claimant has been clean
19 and sober since 1996 with the exception of a few drinks three
20 years ago. The 2004 record was made shortly after claimant
21 admitted using methamphetamine to her parole officer. Based on
22 this, it appears claimant lied to Dr. Suckow. Additionally,
23 considering the lack of objective evidence, the similarity and
24 inaccuracies of the 2003 and 2004 records, a question arises as
25 to the level of thoroughness in these inquiries.

26 Accordingly, I find the ALJ did not err in rejecting Dr.
27 Suckow's diagnoses as based solely on claimant's self report.
28 Additionally, the history considered by Dr. Suckow was

1 inaccurate as to her drug use, which I consider to be material.
2 This is bolstered by Drs. LeBray and Anderson's opinions
3 finding that without drug or alcohol abuse claimant's
4 impairments were non-severe. It is unclear whether Dr. Suckow
5 took into account the effects of claimant's drug or alcohol
6 abuse and whether he knew of claimant's methamphetamine use in
7 2004. Consequently, I find the ALJ did not err in giving
8 little weight to Dr. Suckow's opinion.

9 Claimant's Response to Medication

10 Impairments effectively controlled by medication are not
11 disabling for the purpose of determining eligibility for SSI
12 benefits. See, e.g., Warre v. Comm'r of the SSA, 439 F.3d
13 1001, 1006 (9th Cir. 2006); see also Odle v. Heckler, 707 F.2d
14 439, 440 (9th Cir. 1983) (benefits denied because claimant's
15 impairments responded to medication). However, a disabled
16 claimant may not be denied benefits because of her failure to
17 obtain treatment she cannot afford. See, e.g., Gamble v.
18 Chater, 68 F.3d 319, 321 (9th Cir. 1995). SSR 82-59 provides
19 that an individual's failure to follow prescribed treatment is
20 justifiable if the individual is unable to afford such
21 treatment. See id. (noting that SSR 82-59 interprets 20 C.F.R.
22 §§ 404.1530 and 416.930 and is binding on the SSA).

23 The ALJ found that claimant's impairments respond to
24 medication. On April 17, 2003, Dr. Suckow gave claimant a free
25 sample of Strattera and Paxil. After starting the medication,
26 claimant went from a "little better" in June, to "fairly well"
27 by August, and she continued to do "fairly well" until her last
28 visit on September 15, 2003. During her last visit, claimant

1 reported that when she forgets to take her medication the
2 difference is noticeable; she cannot concentrate. On September
3 15, 2003, claimant's case was closed for failure to attend
4 scheduled meetings. Subsequently, her insurance through Oregon
5 Health Plan was canceled for missing three appointments.

6 On October 28, 2003, claimant reported to Dr. Kallemeyn
7 that friends and family commented on claimant's improvement
8 with medication, that "they've never seen me this functional."
9 Tr. 280. However, she also relayed that she recently ran out
10 of her medication. Notably, no doctor has diagnosed claimant
11 when she was on her medication. Substantial evidence in the
12 record supports a finding that claimant does fairly well when
13 on her medication and that her impairments are effectively
14 controlled by medication.

15 Here, claimant was either receiving the medication free
16 of charge as sample packs or pursuant to her insurance plan,
17 but she failed to attend medical appointments and failed to
18 regularly take her medication. Because she failed to attend
19 appointments her treatment was canceled. Later on, her
20 insurance was canceled for missing three appointments. Her
21 failure to follow the prescribed treatment has little
22 explanation, but it was not because she could not afford it.
23 Additionally, the ALJ did not make a factual finding that
24 claimant does not have, or cannot find, resources for obtaining
25 her medications. See SSR 82-59 (requiring all possible
26 community resources to be explored and claimant's financial
27 circumstances to be documented); see also Warre, 439 F.3d at
28 1006. Accordingly, I find that claimant's impairments can be

1 controlled effectively with medication, and therefore are non-
2 severe for the purposes of determining eligibility for SSI
3 benefits.

4 Claimant's Lack of Credibility

5 The ALJ found that claimant's description of her symptoms
6 was not entirely credible. In evaluating the credibility of a
7 claimant's testimony regarding subjective symptoms, an ALJ must
8 engage in a two-step analysis. Lingenfelter v. Astrue, 504
9 F.3d 1028, 1035-36 (9th Cir. 2007). "First, the ALJ must
10 determine whether the claimant has presented objective medical
11 evidence of an underlying impairment which could reasonably be
12 expected to produce the pain or other symptoms alleged." Id.
13 at 1036 (internal citations and quotation marks omitted). The
14 claimant is not required to show that her impairment "could
15 reasonably be expected to cause the severity of the symptom she
16 has alleged; she need only show that it could reasonably have
17 caused some degree of the symptom." Id. (quoting Smolen v.
18 Chater, 80 F.3d 1273, 1282 (9th Cir. 1996)). Second, if the
19 claimant meets the first test and there is no evidence of
20 malingering, the ALJ can only reject the claimant's testimony
21 about the severity of the symptoms if she gives "specific,
22 clear and convincing reasons" for the rejection. Id.

23 An ALJ may consider many factors in weighing a claimant's
24 credibility, including "(1) ordinary techniques of credibility
25 evaluation, such as the claimant's reputation for lying, prior
26 inconsistent statements concerning the symptoms, and other
27 testimony by the claimant that appears less than candid; (2)
28 unexplained or inadequately explained failure to seek treatment

1 or to follow a prescribed course of treatment; and (3) the
2 claimant's daily activities." Tommasetti v. Astrue, 533 F.3d
3 1035, 1039 (9th Cir. 2008) (quoting Smolen, 80 F.3d at 1284 (9th
4 Cir. 1996)). If an ALJ's finding is supported by substantial
5 evidence, the court "may not engage in second-guessing." Id.
6 (quoting Thomas v. Barnhart, 278 F.3d 947, 959 (9th Cir.
7 2002)).

8 Here, claimant failed to meet the threshold of providing
9 objective medical evidence of an underlying impairment.
10 Accordingly, the ALJ could have rejected her subjective
11 complaints based on that failure alone. Instead, he made
12 specific findings supporting his decision to discount her
13 statements and testimony, noting that: (1) claimant made
14 inconsistent statements regarding her use of illicit drugs and
15 alcohol (tr. 31, 86, 145-55, 280, 308); (2) claimant provided
16 inconsistent reasons for leaving her job as a bell ringer (tr.
17 30, 217, 244); (3) claimant failed to maintain her prescription
18 regimen, failed to attend therapy, and generally failed to
19 comply with medical advice that increased her ability to
20 function (tr. 32, 34-35, 81-159, 271-73, 310, 315, 316-19,
21 325,-28, 330-31, 334-36, 343); (4) evidence of claimant's
22 secondary gain (tr. 34, 272, 279); (5) claimant lacked
23 motivation or interest in work (tr. 32-33); (6) the record
24 lacked objective evidence to support the degree of limitation
25 she has alleged. Tr. 30-35. The AlJ also noted that many of
26 the claimant's crimes are of moral turpitude, which indicates
27 doubt about her truthfulness. The above findings are supported
28 by the record and demonstrate claimant's lack of credibility.

1 For all the reasons stated above, I hold that the ALJ's
2 finding that claimant was not disabled at step two is supported
3 by substantial evidence. Based on this finding, I will not
4 address claimant's remaining allegations of error.

5 CONCLUSION

6 The Commissioner's decision is based on substantial
7 evidence, and is therefore, affirmed. This case is dismissed.
8 IT IS SO ORDERED.

9 Dated this 20 day of March 2009.

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14 Ann Aiken
United States District Judge